

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Federal-State Joint Board on Universal Service; ) CC Docket No. 96-45
Virgin Mobile USA, L.P. Petition for Forbearance )
from 47 U.S.C. § 214(e)(1)(A); )
Petition for Designation as an Eligible )
Telecommunications Carrier in the State of New )
York; )
Petition for Designation as an Eligible )
Telecommunications Carrier in the )
Commonwealth of Virginia; )
Petition for Limited Designation as an Eligible )
Telecommunications Carrier in the State of North )
Carolina; )
Petition for Limited Designation as an Eligible )
Telecommunications Carrier in the State of )
Tennessee. )

ORDER

Adopted: October 29, 2009

Released: October 29, 2009

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we approve a plan submitted by Virgin Mobile USA, L.P. (Virgin Mobile) for complying with conditions imposed in the Virgin Mobile ETC Designation Order.1 In the Virgin Mobile ETC Designation Order, the Commission conditionally granted Virgin Mobile's request for forbearance from section 214(e)(1)(A) of the Communications Act of 1934, as amended (the Act), which requires that an eligible telecommunications carrier (ETC) provide universal service supported services,

1 Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, Compliance Plan (filed Apr. 3, 2009) (Virgin Mobile Compliance Plan); Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (Virgin Mobile ETC Designation Order).

at least in part, over its own facilities.<sup>2</sup> The Commission also designated Virgin Mobile as an ETC for the limited purpose of providing universal service low-income Lifeline service in its licensed service areas in New York, Virginia, North Carolina, and Tennessee.<sup>3</sup> Pursuant to our action in this order, the conditional designations of Virgin Mobile as an ETC for the limited purpose of providing Lifeline service in its licensed service areas in New York, Virginia, North Carolina, and Tennessee will become effective as of the effective date of this order.

## II. BACKGROUND

2. Congress established the federal universal service fund to help ensure that quality services are available at just, reasonable, and affordable rates for consumers throughout the nation, including low-income consumers.<sup>4</sup> The Lifeline program furthers this goal by reducing the price of monthly telephone service for low-income consumers.<sup>5</sup> The universal service fund then reimburses ETCs for the revenues foregone through their participation in the Lifeline program.<sup>6</sup>

3. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>7</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>8</sup> To be eligible for ETC designation, a carrier must also meet certain statutory requirements, including offering the supported services over its own facilities or a combination of its own facilities and resale of another carrier’s service.<sup>9</sup>

4. Section 214(e)(6) of the Act directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>10</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>11</sup> In the

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<sup>2</sup> *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3381, para. 1; see 47 U.S.C. § 214(e)(1)(A). The Commission also forbore, on its own motion, from section 54.201(a)(1) of the Commission’s rules, which mirrors section 214(e) of the Act and requires that ETCs be facilities-based, at least in part. See *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3398, para. 46.

<sup>3</sup> *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3381–82, para. 2. In light of the Pennsylvania Public Utility Commission’s determination that it will exercise jurisdiction over wireless carriers as ETCs pursuant to section 214(e)(2) of the Act, the Commission dismissed without prejudice the petition filed by Virgin Mobile seeking designation as an ETC in Pennsylvania. *Id.* at 3382, para. 2.

<sup>4</sup> 47 U.S.C. § 254(b)(3).

<sup>5</sup> See 47 C.F.R. § 54.401(a)(2).

<sup>6</sup> See 47 C.F.R. § 54.407(b)–(c).

<sup>7</sup> 47 U.S.C. § 254(e).

<sup>8</sup> 47 U.S.C. § 214(e)(1).

<sup>9</sup> 47 U.S.C. § 214(e)(1)(A); see also 47 C.F.R. § 54.201(i) (“A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier’s services.”).

<sup>10</sup> 47 U.S.C. § 214(e)(6). Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations. 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000).

<sup>11</sup> 47 U.S.C. § 214(e)(6).

*Section 214(e)(6) Public Notice*, the Commission established procedures for designating ETCs.<sup>12</sup> In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6).<sup>13</sup>

5. In the past, the Commission had declined to extend ETC status to pure resellers. In the *Universal Service First Report and Order*, the Commission found that the plain language of the Act requires that a carrier seeking ETC designation must own facilities, at least in part, thus precluding a carrier that offers services solely through resale from being designated as eligible.<sup>14</sup> The Commission reasoned, without distinguishing among the various universal service support programs, that it was appropriate to deny pure resellers universal service support because pure resellers could receive the benefit by purchasing wholesale services at a price that reflects the universal service support received by the incumbent provider.<sup>15</sup> Also in the *Universal Service First Report and Order*, the Commission found that although resellers were not eligible to receive universal service support directly, they were not precluded from offering Lifeline services.<sup>16</sup> Resellers could offer Lifeline services by purchasing services at wholesale rates pursuant to section 251(c)(4) that reflect the customer-specific Lifeline support amount received by the incumbent local exchange carrier and then passing those discounts through to qualifying low-income customers.<sup>17</sup> Although the Commission declined to forbear from the facilities requirement in the *Universal Service First Report and Order*, finding that the statutory criteria for forbearance had not

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<sup>12</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948-49 (1997) (*Section 214(e)(6) Public Notice*). An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is “not subject to the jurisdiction of a state commission;” (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services;” (4) a description of how the petitioner “advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution;” and (5) if the petitioner meets the definition of a “rural telephone company” under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a “rural telephone company,” a detailed description of the geographic service area for which it requests an ETC designation from the Commission. *Id.*

<sup>13</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*). Specifically, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. *Id.* at 6380, para 20; see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004).

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8875, para. 178 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (adopting the Federal-State Joint Board on Universal Service’s analysis and conclusion); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-73, paras. 160-61 (Fed-State Jt. Bd. 1996).

<sup>15</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8866, 8875, paras. 161, 178.

<sup>16</sup> *Id.* at 8972, para. 370.

<sup>17</sup> *Id.* The Commission noted that it would reassess this approach in the future if the Lifeline program appeared to be under-utilized. *Id.*

been met, the Commission did not consider in that order whether providing only Lifeline support directly to a pure wireless reseller would result in double recovery.<sup>18</sup>

6. In the 2005 *TracFone Forbearance Order*, however, the Commission determined that providing only Lifeline support directly to a pure wireless reseller did not result in double recovery.<sup>19</sup> Specifically, the Commission found that because low-income support distribution is customer-specific and because TracFone's wholesale providers are not subject to section 251(c)(4) resale obligations, providing Lifeline support directly to TracFone would not result in double recovery.<sup>20</sup>

7. Virgin Mobile's Compliance Plan. Virgin Mobile is a non-facilities-based commercial mobile radio services provider (*i.e.*, a pure wireless reseller) that provides prepaid wireless

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<sup>18</sup> *Id.* at 8875–76, para. 179. Making no finding with respect to the first two prongs of the forbearance test, the Commission concluded that forbearance was not in the public interest because allowing pure resellers to receive universal service support would result in double recovery by the resellers. *Id.* In reaching this conclusion, however, the Commission considered the issue in the context of wireless resellers without differentiating among the types of universal service support and the basis of distribution.

<sup>19</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15100, para. 12 (2005) (*TracFone Forbearance Order*); *see also Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households*, CC Docket No. 96-45, Order, 24 FCC Rcd 3375 (2009) (*TracFone Forbearance Modification Order*) (modifying the requirement that TracFone obtain a certification from each PSAP where it provides Lifeline service confirming that it provides its customers with access to basic and E911 service); *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (*TracFone ETC Designation Order*) (conditionally designating TracFone as an ETC for the limited purpose of providing Lifeline support in its licensed service areas in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia).

<sup>20</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15100–01, para. 12; *see* 47 U.S.C. § 251(c)(4).

telecommunications services.<sup>21</sup> On December 5, 2007, Virgin Mobile filed a petition seeking forbearance from the facilities requirement of section 214(e)(1)(A) of the Act.<sup>22</sup> In the *Virgin Mobile ETC Designation Order*, the Commission followed the path laid out by the *TracFone Forbearance Order* and the *TracFone Forbearance Modification Order* in agreeing to forbear from applying the facilities requirement for the limited purpose of allowing Virgin Mobile to seek designation as an ETC eligible for support from the Commission's Lifeline program.<sup>23</sup> In so doing, the Commission conditioned forbearance on Virgin Mobile:

- (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;
- (b) providing its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;
- (c) complying with conditions (a) and (b) as of the date it provides Lifeline service;
- (d) obtaining a certification from each Public Safety Answering Point (PSAP) where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP's service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;
- (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and
- (f) establishing safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.<sup>24</sup>

In addition, the Commission conditionally designated Virgin Mobile as an ETC for the limited purpose of providing Lifeline service in its licensed service areas in New York, Virginia, North Carolina, and Tennessee.<sup>25</sup> The Commission held that Virgin Mobile's ETC designations will not take effect until the Wireline Competition Bureau (Bureau) has approved Virgin Mobile's plan for complying with the conditions outlined in the *Virgin Mobile ETC Designation Order*.<sup>26</sup>

8. On April 3, 2009, Virgin Mobile filed a plan outlining measures that it will undertake to implement the conditions imposed in the *Virgin Mobile ETC Designation Order*.<sup>27</sup> The Bureau released a public notice concerning Virgin Mobile's compliance plan on May 6, 2009, seeking comments by June 5, 2009, and reply comments by June 22, 2009.<sup>28</sup> No parties filed comments or objections to Virgin Mobile's compliance plan.

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<sup>21</sup> *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3382, para. 3.

<sup>22</sup> Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), CC Docket No. 96-45 (filed Dec. 5, 2007) (Virgin Mobile Forbearance Petition).

<sup>23</sup> See *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3381, para. 1.

<sup>24</sup> *Id.* at 3386-87, para. 12.

<sup>25</sup> See *id.* at 3381-82, para. 2.

<sup>26</sup> *Id.* at 3382, para. 2.

<sup>27</sup> See *supra* note 1.

<sup>28</sup> *Comment Sought on Virgin Mobile USA, L.P.'s Plan to Comply with the Conditions of its Limited ETC Designation*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 5337 (Wireline Comp. Bur. 2009).

### III. DISCUSSION

9. After careful review of the record and as discussed in detail below, we find that Virgin Mobile's compliance plan adequately implements the conditions of forbearance imposed by the *Virgin Mobile ETC Designation Order*. We therefore approve the compliance plan, and Virgin Mobile's ETC designations will become effective as of the effective date of this order.

10. Access to 911 and E911 Services. In its compliance plan, Virgin Mobile asserts that, as required by the *Virgin Mobile ETC Designation Order*, it will ensure that all Lifeline customers receive 911 and E911 access at the time of the customer's activation of Lifeline service, and that access will continue regardless of activation status and the availability of prepaid minutes.<sup>29</sup> Specifically, Virgin Mobile explains that it "currently provides access to 911 and E911 services to the extent that these services have been deployed by Sprint Nextel" and that, before initiating Lifeline service, it "will confirm that Sprint Nextel has deployed E911 services in a specific PSAP territory."<sup>30</sup> Virgin Mobile also promises to transmit all 911 emergency calls placed through activated handsets, regardless of whether the account associated with the handset is active, has prepaid minutes remaining, or has been suspended or terminated.<sup>31</sup>

11. Provision of E911 Handsets. Virgin Mobile also states that it will comply with the condition in the *Virgin Mobile ETC Designation Order* requiring it to "provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service."<sup>32</sup> To implement this requirement, Virgin Mobile plans to ship only E911-compliant handsets to Lifeline customers that are new to Virgin Mobile's service. If Virgin Mobile determines during the Lifeline activation process that an existing customer's current handset is inadequate, the company states that it will ship an E911-compliant handset to that customer.<sup>33</sup>

12. Certification from PSAPs or Self-Certification. Virgin Mobile states that it will obtain the requisite certification from each PSAP where Virgin Mobile provides Lifeline service confirming that its customers receive 911 and E911 services, as required by the *Virgin Mobile ETC Designation Order*.<sup>34</sup> Alternatively, Virgin Mobile asserts that, if within 90 days of receiving the company's request, a PSAP has neither provided the requisite certification nor made an affirmative finding that Virgin Mobile does not provide 911 and E911 services in the PSAP's territory, Virgin Mobile will self-certify that it meets the basic and E911 requirements.<sup>35</sup> In its compliance plan, Virgin Mobile includes a sample "Request for PSAP Certification for Lifeline Program" and "Virgin Mobile Lifeline Program PSAP Certification Form," which informs each PSAP of the certification requirement and allows it to certify that Virgin Mobile provides 911 and E911 services in the PSAP's service area.<sup>36</sup> Virgin Mobile also promises to

<sup>29</sup> *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3386-87, para. 12; Virgin Mobile Compliance Plan at 5.

<sup>30</sup> Virgin Mobile Compliance Plan at 5-6.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3386-87, para. 12; Virgin Mobile Compliance Plan at 6-7.

<sup>33</sup> Virgin Mobile Compliance Plan at 6-7. We note the language in Virgin Mobile's Compliance Plan proposing to "offer[] E911-compliant handsets to new Lifeline customers upon activation of service." *Id.* at 3. We remind Virgin Mobile of its obligation under the *Virgin Mobile ETC Designation Order* to provide E911-compliant handsets to all new Lifeline customers as of the date Virgin Mobile begins providing Lifeline service. *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3386-87, para. 12.

<sup>34</sup> Virgin Mobile Compliance Plan at 6; *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3386-87, para. 12.

<sup>35</sup> Virgin Mobile Compliance Plan at 6.

<sup>36</sup> *Id.* at Exh. A.

work with PSAPs throughout the certification process, providing sample Lifeline handsets and handset technicians upon request.<sup>37</sup>

13. Certification of Lifeline Customers' Eligibility. In accordance with the *Virgin Mobile ETC Designation Order*, Virgin Mobile asserts that it will deal directly with customers to certify and verify the customers' Lifeline eligibility. In its compliance plan, Virgin Mobile notes that its website will contain a link to information regarding the company's Lifeline service plan, including a detailed description of the program and state-specific eligibility criteria.<sup>38</sup> Virgin Mobile also commits to provide consumers purchasing service through third-party outlets with materials describing the Lifeline plan, including eligibility requirements and instructions for enrollment.<sup>39</sup> Virgin Mobile also states that materials distributed at third-party outlets will direct consumers to contact the company through a dedicated toll-free number or Virgin Mobile's Lifeline website to receive additional information and to call the toll-free number to apply for service.<sup>40</sup>

14. In addition, Virgin Mobile asserts that, when applicants request Lifeline service, Virgin Mobile will require them to attest and sign under penalty of perjury that they meet the relevant eligibility criteria.<sup>41</sup> Specifically, applicants must verify that they meet the eligibility criteria for the Lifeline program, that they are the head of their households, and that they receive Lifeline-supported service only from Virgin Mobile.<sup>42</sup> Each subsequent year, Virgin Mobile will notify each Lifeline consumer via text message prior to their service anniversary date that the customer must confirm his or her continued eligibility in accordance with the applicable requirements.<sup>43</sup> Customers will then be directed to Virgin Mobile's website, and they will be prompted to certify their continued eligibility either online or via U.S. mail.<sup>44</sup> Virgin Mobile also asserts that customers that fail to verify their eligibility within 30 days of receipt of the verification notice will be removed from the program.<sup>45</sup>

15. Safeguards Against Misuse of Lifeline Subsidies. Virgin Mobile's compliance plan further details how it will protect against waste, fraud, and abuse in receiving Lifeline support.<sup>46</sup> Virgin Mobile plans to distribute information about its Lifeline program via brochures and its website.<sup>47</sup> To limit the role played by its retail partners, Virgin Mobile will require consumers to call a toll-free number to apply; thereafter, Virgin Mobile will mail the application to the consumer for signature under penalty of perjury and for the submission of supporting documentation.<sup>48</sup> Virgin Mobile will perform internal checks to ensure that no more than one person at a consumer's residence receives Lifeline-supported

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<sup>37</sup> *Id.* at 6.

<sup>38</sup> Virgin Mobile Compliance Plan at 7.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 8; *see also id.* at Exh. B (explaining that to qualify based on participation in a program for low-income households, a consumer "must attach a copy of a program identification card or other social service agency document that shows you currently participate in one of the programs listed above").

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 9–10.

<sup>45</sup> *Id.* at 10.

<sup>46</sup> Virgin Mobile Compliance Plan at 8–9; *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3386–87, 3392, para. 12, 25.

<sup>47</sup> Virgin Mobile Compliance Plan at 7.

<sup>48</sup> *Id.* at 8.

services from Virgin Mobile, and it will deny any application where that is the case.<sup>49</sup> Additionally, Virgin Mobile will provide an annual report to the Commission “detailing any instances of fraud or misuse” in its Lifeline program.<sup>50</sup>

16. Virgin Mobile argues that its implementing procedures as set forth in its compliance plan “fully satisfy the conditions established by the Commission.”<sup>51</sup> We agree, and we therefore approve the compliance plan submitted by Virgin Mobile. In so doing, we remind Virgin Mobile that the Commission may institute an inquiry on its own motion to examine the company’s records and documentation to ensure that the universal service Lifeline support it receives is being used for the purpose for which it was intended.<sup>52</sup> Virgin Mobile will be required to provide such records and documentation to the Commission and the Universal Service Administrative Company upon request. If Virgin Mobile fails to fulfill its obligations under the Act, the Commission’s rules, or the *Virgin Mobile ETC Designation Order* after it begins receiving Lifeline support, the Commission may revoke Virgin Mobile’s limited ETC designation or even assess forfeitures as permitted under the Act and the Commission’s rules.<sup>53</sup>

#### IV. ORDERING CLAUSES

17. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated under sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, that Virgin Mobile USA, L.P.’s compliance plan submitted as a condition of its designation as an eligible telecommunications carrier eligible only for Lifeline support in its licensed service areas in New York, Virginia, North Carolina, and Tennessee IS APPROVED as described herein.

18. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

19. IT IS FURTHER ORDERED that, a copy of this order SHALL BE transmitted to the New York Public Service Commission, the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Tennessee Regulatory Authority, and the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

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<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 10.

<sup>52</sup> 47 U.S.C. §§ 220, 403.

<sup>53</sup> See 47 U.S.C. §§ 254(e), 503(b); *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).